

Remarks

The Applicant submits a new Replacement Sheet of drawings wherein reference number 10 has been deleted from Fig. 2.

The Applicant has amended independent Claim 33 for clarity. For example, the term "level" has been replaced by "position" which is believed to be better idiomatic English from the original French translation. Other minor amendments have been made.

Claims 19 and 20 have been amended to change the dependency so that it is properly on Claim 18 and not on Claim 33.

Claim 24 has been amended to remove "the" in the second line.

Claim 28 has been amended to remove an erroneous reference to a "housing." Thus, the apparatus now further comprises an insertable element containing at least one piece of information associated with contents of the tube.

Finally, the Applicant has added new independent Claims 34 and 35 which are based fundamentally on independent Claim 33.

Entry of the above amendment to Fig. 2, Claims 19, 20, 24, 28 and 33 and addition of new Claims 34 and 35 into the official file is respectfully requested. The Applicant concurrently submits a Request for Continued Examination to facilitate such entry and consideration.

The drawings stand objected to because of the inclusion of reference number 10 in Fig. 2. The Applicant has thus submitted a Replacement Sheet wherein reference number 10 has been deleted from Fig. 2. Entry into the official file and withdrawal of the objection is respectfully requested.

Claims 28-31 stand rejected under 35 USC §112 as failing to comply with the written description requirement. The Applicant notes with appreciation the Examiner's helpful comments

with respect to Claim 28 (inadvertently referred to as Claim 18) and Claims 29 and 30. As noted above, the Applicant has amended Claim 28 so that it now recites that the apparatus further comprises an insertable element containing at least one piece of information associated with contents of the tube. The Applicant respectfully submits that the issues surrounding the housing are now moot. Withdrawal of the rejection is respectfully requested.

Claims 19, 20, 24 and 28 stand rejected under 35 USC §112 as being indefinite. Again, the Applicant notes with appreciation the Examiner's helpful comments with respect to Claims 19, 20, 24 and 28 and insufficient antecedent basis. The Applicant has amended all of Claims 19, 20, 24 and 28 and respectfully submits that there is now proper antecedent basis for the items at issue. Withdrawal of the rejection is respectfully requested.

Claims 17-26 and 33 stand rejected under 35 USC §103 over the hypothetical combination of Marcus with Meek. The Applicant notes with appreciation the Examiner's detailed comments hypothetically applying the combination against those claims. The Applicant nonetheless respectfully submits that one skilled in the art would not make the hypothetical combination, but in any event, the combination would result in a structure that is different from that recited in those claims. Reasons are set forth below.

The rejection frankly acknowledges that Meek does not disclose a tube shaped and sized to contain biological specimens and opening of the plug brings about a physical transformation of the sleeve and not of the plug, as well as the physical transformation as being irreversible and visible. The Applicant agrees. Thus, the rejection turns to Marcus to cure those deficiencies. Nonetheless, the rejection still further frankly acknowledges that Marcus does not fully cure those deficiencies inasmuch as it concedes that Marcus does not disclose a tube shaped and sized to contain biological specimens. Again, the Applicant agrees.

However, the Applicant respectfully submits that one would not combine Marcus with Meek in the first place, but in any event, that combination would still not result in the subject matter of Claims 17-26 and 33---even beyond the acknowledgement that the combination does not disclose a tube shaped and sized to contain biological specimens.

A primary objective with respect to Meek is that the diffuser 10 is “vapor penetrable.” This is achieved in Meek by any number of means such as a multiplicity of holes in an otherwise solid material or by mesh or screen-like material or other means. Thus, it is critical to the operation of Meek that the diffuser 10 not be sealed and not be “leak proof.” In sharp contrast, the primary objective of the diffuser 10 of Meek is to cause the contents of the diffuser 10 to be able to escape from that container without any assistance.

This is contrasted to Marcus which discloses a container 10 with a sealable body 12. The objective of that container 10 comprising the body 12 is to be able to keep the contents completely sealed and is indeed intended “to be leak proof.”

The Applicant respectfully submits that one skilled in the art would not substitute the body 12 of Marcus for the diffuser 10 of Meek. Why? Because utilizing the body 12 of Marcus in place of the diffuser 10 of Meek would destroy a fundamental object of the diffuser 10 of Meek in that the volatile contents of the diffuser 10 of Meek would be sealed or retained within the diffuser 10 irrespective of its position with respect to the receptor 11. The Applicant therefore respectfully submits that this combination would not be performed by one skilled in the art. Those skilled in the art do not make combinations or modify one disclosure by looking to a second disclosure when such a modification would destroy a fundamental, if not the primary, objective of the publication/device being modified. On this basis alone, the Applicant respectfully submits that the rejection must fail.

In any event, the Applicant respectfully submits that the combination would result in a

different structure. In that regard, referring back to Meek, the Meek device is intended to have the receptacle 11 and diffuser 10 be repeatedly moveable with respect to each other. In fact, the disclosure of Meek makes it very clear that the diffuser 10 is intended to be moved outwardly with respect to the receptacle 11 and inwardly with respect to the receptacle 11 as many times as desired.

Thus, the Applicant respectfully submits that while there may be multiple positions such as the first and second positions as recited in Claim 33, there is no irreversible integration of the diffuser 10 with respect to the receptacle 11 at a first position and there is no access to biological specimens after interlocking in a second position that causes an irreversible and physical transformation. There is no transformation of the sleeve, i.e., the receptacle 11 of Meek upon interlocking at any position. The sleeve is in a constant configuration that is not variable and does not change or transform in any way. Thus, Meek is deficient on that specifically claimed aspect.

Marcus provides no disclosure that would change the deficiency with respect to Meek. Merely substituting the body 12 of Marcus for the diffuser 10 of Meek will not result in a physical transformation of the receptacle 11 of Meek at any position, much less a first or second position.

In sharp contrast, to the extent that Marcus discloses any type of physical transformation, that physical transformation would be with respect to a flag 50 attached to the body 12 and the cap 14 of Marcus. However, the physical transformation recited in Claim 33 has nothing to do with the Applicant's tube (the body 12 of Marcus). Instead, the Applicant's physical transformation is with respect to the sleeve (receptacle 11 of Meek).

Hence, the Applicant respectfully submits that even if one skilled in the art were to make the hypothetical combination of Marcus with Meek, the structure resulting from that combination would still be completely different from the Applicant's claimed structure. Withdrawal of the rejection is respectfully requested.

In light of the foregoing, the Applicant respectfully submits that the entire application is now in condition for allowance, which is respectfully requested.

Respectfully submitted,



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